

108TH CONGRESS
1ST SESSION

S. 1730

To require that health plans provide coverage for a minimum hospital stay for mastectomies, lumpectomies, and lymph node dissection for the treatment of breast cancer and coverage for secondary consultations.

IN THE SENATE OF THE UNITED STATES

OCTOBER 14, 2003

Ms. SNOWE (for herself, Mrs. MURRAY, Mr. BIDEN, and Mrs. FEINSTEIN) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To require that health plans provide coverage for a minimum hospital stay for mastectomies, lumpectomies, and lymph node dissection for the treatment of breast cancer and coverage for secondary consultations.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Women’s Health and
5 Cancer Rights Act of 2003”.

6 **SEC. 2. FINDINGS.**

7 Congress finds that—

1 (1) the offering and operation of health plans
2 affect commerce among the States;

3 (2) health care providers located in a State
4 serve patients who reside in the State and patients
5 who reside in other States; and

6 (3) in order to provide for uniform treatment of
7 health care providers and patients among the States,
8 it is necessary to cover health plans operating in 1
9 State as well as health plans operating among the
10 several States.

11 **SEC. 3. AMENDMENTS TO THE EMPLOYEE RETIREMENT IN-**
12 **COME SECURITY ACT OF 1974.**

13 (a) IN GENERAL.—Subpart B of part 7 of subtitle
14 B of title I of the Employee Retirement Income Security
15 Act of 1974 (29 U.S.C. 1185 et seq.) is amended by add-
16 ing at the end the following:

17 **“SEC. 714. REQUIRED COVERAGE FOR MINIMUM HOSPITAL**
18 **STAY FOR MASTECTOMIES, LUMPECTOMIES,**
19 **AND LYMPH NODE DISSECTIONS FOR THE**
20 **TREATMENT OF BREAST CANCER AND COV-**
21 **ERAGE FOR SECONDARY CONSULTATIONS.**

22 “(a) INPATIENT CARE.—

23 “(1) IN GENERAL.—A group health plan, and a
24 health insurance issuer providing health insurance
25 coverage in connection with a group health plan,

1 that provides medical and surgical benefits shall en-
2 sure that inpatient (and in the case of a
3 lumpectomy, outpatient) coverage and radiation
4 therapy is provided for breast cancer treatment and
5 that inpatient coverage with respect to the treatment
6 of breast cancer is provided for a period of time as
7 is determined by the attending physician, in con-
8 sultation with the patient, to be medically appro-
9 priate following—

10 “(A) a mastectomy;

11 “(B) breast conserving surgery (such as a
12 lumpectomy, whether performed on an inpatient
13 or outpatient basis) as well as radiation treat-
14 ment; or

15 “(C) a lymph node dissection for the treat-
16 ment of breast cancer.

17 “(2) EXCEPTION.—Nothing in this section shall
18 be construed as requiring the provision of inpatient
19 coverage if the attending physician and patient de-
20 termine that a shorter period of hospital stay is
21 medically appropriate.

22 “(b) PROHIBITION ON CERTAIN MODIFICATIONS.—
23 In implementing the requirements of this section, a group
24 health plan, and a health insurance issuer providing health
25 insurance coverage in connection with a group health plan,

1 may not modify the terms and conditions of coverage
 2 based on the determination by a participant or beneficiary
 3 to request less than the minimum coverage required under
 4 subsection (a).

5 “(c) NOTICE.—A group health plan, and a health in-
 6 surance issuer providing health insurance coverage in con-
 7 nection with a group health plan shall provide notice to
 8 each participant and beneficiary under such plan regard-
 9 ing the coverage required by this section in accordance
 10 with regulations promulgated by the Secretary. Such no-
 11 tice shall be in writing and prominently positioned in any
 12 literature or correspondence made available or distributed
 13 by the plan or issuer and shall be transmitted—

14 “(1) in the next mailing made by the plan or
 15 issuer to the participant or beneficiary;

16 “(2) as part of any yearly informational packet
 17 sent to the participant or beneficiary; or

18 “(3) not later than January 1, 2004;

19 whichever is earlier.

20 “(d) SECONDARY CONSULTATIONS.—

21 “(1) IN GENERAL.—A group health plan, and a
 22 health insurance issuer providing health insurance
 23 coverage in connection with a group health plan,
 24 that provides coverage with respect to medical and
 25 surgical services provided in relation to the diagnosis

1 and treatment of cancer shall ensure that full cov-
2 erage is provided for secondary consultations by spe-
3 cialists in the appropriate medical fields (including
4 pathology, radiology, and oncology) to confirm or re-
5 fute such diagnosis. Such plan or issuer shall ensure
6 that full coverage is provided for such secondary
7 consultation whether such consultation is based on
8 a positive or negative initial diagnosis. In any case
9 in which the attending physician certifies in writing
10 that services necessary for such a secondary con-
11 sultation are not sufficiently available from special-
12 ists operating under the plan with respect to whose
13 services coverage is otherwise provided under such
14 plan or by such issuer, such plan or issuer shall en-
15 sure that coverage is provided with respect to the
16 services necessary for the secondary consultation
17 with any other specialist selected by the attending
18 physician for such purpose at no additional cost to
19 the individual beyond that which the individual
20 would have paid if the specialist was participating
21 in the network of the plan.

22 “(2) EXCEPTION.—Nothing in paragraph (1)
23 shall be construed as requiring the provision of sec-
24 ondary consultations where the patient determines
25 not to seek such a consultation.

1 “(e) PROHIBITION ON PENALTIES OR INCENTIVES.—

2 A group health plan, and a health insurance issuer pro-
 3 viding health insurance coverage in connection with a
 4 group health plan, may not—

5 “(1) penalize or otherwise reduce or limit the
 6 reimbursement of a provider or specialist because
 7 the provider or specialist provided care to a partici-
 8 pant or beneficiary in accordance with this section;

9 “(2) provide financial or other incentives to a
 10 physician or specialist to induce the physician or
 11 specialist to keep the length of inpatient stays of pa-
 12 tients following a mastectomy, lumpectomy, or a
 13 lymph node dissection for the treatment of breast
 14 cancer below certain limits or to limit referrals for
 15 secondary consultations; or

16 “(3) provide financial or other incentives to a
 17 physician or specialist to induce the physician or
 18 specialist to refrain from referring a participant or
 19 beneficiary for a secondary consultation that would
 20 otherwise be covered by the plan or coverage in-
 21 volved under subsection (d).”.

22 (b) CLERICAL AMENDMENT.—The table of contents
 23 in section 1 of the Employee Retirement Income Security
 24 Act of 1974 is amended by inserting after the item relat-
 25 ing to section 713 the following:

“Sec. 714. Required coverage for minimum hospital stay for mastectomies, lumpectomies, and lymph node dissections for the treatment of breast cancer and coverage for secondary consultations.”.

1 (c) EFFECTIVE DATES.—

2 (1) IN GENERAL.—The amendments made by
3 this section shall apply with respect to plan years be-
4 ginning on or after the date of enactment of this
5 Act.

6 (2) SPECIAL RULE FOR COLLECTIVE BAR-
7 GAINING AGREEMENTS.—In the case of a group
8 health plan maintained pursuant to 1 or more collec-
9 tive bargaining agreements between employee rep-
10 resentatives and 1 or more employers ratified before
11 the date of enactment of this Act, the amendments
12 made by this section shall not apply to plan years
13 beginning before the later of—

14 (A) the date on which the last collective
15 bargaining agreements relating to the plan ter-
16 minates (determined without regard to any ex-
17 tension thereof agreed to after the date of en-
18 actment of this Act), or

19 (B) January 1, 2004.

20 For purposes of subparagraph (A), any plan amend-
21 ment made pursuant to a collective bargaining
22 agreement relating to the plan which amends the
23 plan solely to conform to any requirement added by

1 this section shall not be treated as a termination of
2 such collective bargaining agreement.

3 **SEC. 4. AMENDMENTS TO THE PUBLIC HEALTH SERVICE**

4 **ACT RELATING TO THE GROUP MARKET.**

5 (a) IN GENERAL.—Subpart 2 of part A of title
6 XXVII of the Public Health Service Act (42 U.S.C.
7 300gg–4 et seq.) is amended by adding at the end the
8 following:

9 **“SEC. 2707. REQUIRED COVERAGE FOR MINIMUM HOSPITAL**
10 **STAY FOR MASTECTOMIES, LUMPECTOMIES,**
11 **AND LYMPH NODE DISSECTIONS FOR THE**
12 **TREATMENT OF BREAST CANCER AND COV-**
13 **ERAGE FOR SECONDARY CONSULTATIONS.**

14 “(a) INPATIENT CARE.—

15 “(1) IN GENERAL.—A group health plan, and a
16 health insurance issuer providing health insurance
17 coverage in connection with a group health plan,
18 that provides medical and surgical benefits shall en-
19 sure that inpatient (and in the case of a
20 lumpectomy, outpatient) coverage and radiation
21 therapy is provided for breast cancer treatment and
22 that inpatient coverage with respect to the treatment
23 of breast cancer is provided for a period of time as
24 is determined by the attending physician, in con-

1 sultation with the patient, to be medically appro-
2 prium following—

3 “(A) a mastectomy;

4 “(B) breast conserving surgery (such as a
5 lumpectomy, whether performed on an inpatient
6 or outpatient basis) as well as radiation treat-
7 ment; or

8 “(C) a lymph node dissection for the treat-
9 ment of breast cancer.

10 “(2) EXCEPTION.—Nothing in this section shall
11 be construed as requiring the provision of inpatient
12 coverage if the attending physician and patient de-
13 termine that a shorter period of hospital stay is
14 medically appropriate.

15 “(b) PROHIBITION ON CERTAIN MODIFICATIONS.—
16 In implementing the requirements of this section, a group
17 health plan, and a health insurance issuer providing health
18 insurance coverage in connection with a group health plan,
19 may not modify the terms and conditions of coverage
20 based on the determination by a participant or beneficiary
21 to request less than the minimum coverage required under
22 subsection (a).

23 “(c) NOTICE.—A group health plan, and a health in-
24 surance issuer providing health insurance coverage in con-
25 nection with a group health plan shall provide notice to

1 each participant and beneficiary under such plan regard-
 2 ing the coverage required by this section in accordance
 3 with regulations promulgated by the Secretary. Such no-
 4 tice shall be in writing and prominently positioned in any
 5 literature or correspondence made available or distributed
 6 by the plan or issuer and shall be transmitted—

7 “(1) in the next mailing made by the plan or
 8 issuer to the participant or beneficiary;

9 “(2) as part of any yearly informational packet
 10 sent to the participant or beneficiary; or

11 “(3) not later than January 1, 2004;
 12 whichever is earlier.

13 “(d) SECONDARY CONSULTATIONS.—

14 “(1) IN GENERAL.—A group health plan, and a
 15 health insurance issuer providing health insurance
 16 coverage in connection with a group health plan that
 17 provides coverage with respect to medical and sur-
 18 gical services provided in relation to the diagnosis
 19 and treatment of cancer shall ensure that full cov-
 20 erage is provided for secondary consultations by spe-
 21 cialists in the appropriate medical fields (including
 22 pathology, radiology, and oncology) to confirm or re-
 23 fute such diagnosis. Such plan or issuer shall ensure
 24 that full coverage is provided for such secondary
 25 consultation whether such consultation is based on

1 a positive or negative initial diagnosis. In any case
2 in which the attending physician certifies in writing
3 that services necessary for such a secondary con-
4 sultation are not sufficiently available from special-
5 ists operating under the plan with respect to whose
6 services coverage is otherwise provided under such
7 plan or by such issuer, such plan or issuer shall en-
8 sure that coverage is provided with respect to the
9 services necessary for the secondary consultation
10 with any other specialist selected by the attending
11 physician for such purpose at no additional cost to
12 the individual beyond that which the individual
13 would have paid if the specialist was participating
14 in the network of the plan.

15 “(2) EXCEPTION.—Nothing in paragraph (1)
16 shall be construed as requiring the provision of sec-
17 ondary consultations where the patient determines
18 not to seek such a consultation.

19 “(e) PROHIBITION ON PENALTIES OR INCENTIVES.—
20 A group health plan, and a health insurance issuer pro-
21 viding health insurance coverage in connection with a
22 group health plan, may not—

23 “(1) penalize or otherwise reduce or limit the
24 reimbursement of a provider or specialist because

1 the provider or specialist provided care to a partici-
 2 pant or beneficiary in accordance with this section;

3 “(2) provide financial or other incentives to a
 4 physician or specialist to induce the physician or
 5 specialist to keep the length of inpatient stays of pa-
 6 tients following a mastectomy, lumpectomy, or a
 7 lymph node dissection for the treatment of breast
 8 cancer below certain limits or to limit referrals for
 9 secondary consultations; or

10 “(3) provide financial or other incentives to a
 11 physician or specialist to induce the physician or
 12 specialist to refrain from referring a participant or
 13 beneficiary for a secondary consultation that would
 14 otherwise be covered by the plan or coverage in-
 15 volved under subsection (d).”.

16 (b) EFFECTIVE DATES.—

17 (1) IN GENERAL.—The amendments made by
 18 this section shall apply to group health plans for
 19 plan years beginning on or after the date of enact-
 20 ment of this Act.

21 (2) SPECIAL RULE FOR COLLECTIVE BAR-
 22 GAINING AGREEMENTS.—In the case of a group
 23 health plan maintained pursuant to 1 or more collec-
 24 tive bargaining agreements between employee rep-
 25 resentatives and 1 or more employers ratified before

1 the date of enactment of this Act, the amendments
 2 made by this section shall not apply to plan years
 3 beginning before the later of—

4 (A) the date on which the last collective
 5 bargaining agreements relating to the plan ter-
 6 minates (determined without regard to any ex-
 7 tension thereof agreed to after the date of en-
 8 actment of this Act), or

9 (B) January 1, 2004.

10 For purposes of subparagraph (A), any plan amend-
 11 ment made pursuant to a collective bargaining
 12 agreement relating to the plan which amends the
 13 plan solely to conform to any requirement added by
 14 this section shall not be treated as a termination of
 15 such collective bargaining agreement.

16 **SEC. 5. AMENDMENT TO THE PUBLIC HEALTH SERVICE ACT**
 17 **RELATING TO THE INDIVIDUAL MARKET.**

18 (a) IN GENERAL.—The first subpart 3 of part B of
 19 title XXVII of the Public Health Service Act (42 U.S.C.
 20 300gg–11 et seq.) is amended—

21 (1) by adding after section 2752 the following:

1 **“SEC. 2753. REQUIRED COVERAGE FOR MINIMUM HOSPITAL**
 2 **STAY FOR MASTECTOMIES, LUMPECTOMIES,**
 3 **AND LYMPH NODE DISSECTIONS FOR THE**
 4 **TREATMENT OF BREAST CANCER AND SEC-**
 5 **ONDARY CONSULTATIONS.**

6 “The provisions of section 2707 shall apply to health
 7 insurance coverage offered by a health insurance issuer
 8 in the individual market in the same manner as they apply
 9 to health insurance coverage offered by a health insurance
 10 issuer in connection with a group health plan in the small
 11 or large group market.”; and

12 (2) by redesignating such subpart 3 as subpart
 13 2.

14 (b) **EFFECTIVE DATE.**—The amendment made by
 15 this section shall apply with respect to health insurance
 16 coverage offered, sold, issued, renewed, in effect, or oper-
 17 ated in the individual market on or after the date of enact-
 18 ment of this Act.

19 **SEC. 6. AMENDMENTS TO THE INTERNAL REVENUE CODE**
 20 **OF 1986.**

21 (a) **IN GENERAL.**—Subchapter B of chapter 100 of
 22 the Internal Revenue Code of 1986 is amended—

23 (1) in the table of sections, by inserting after
 24 the item relating to section 9812 the following:

“Sec. 9813. Required coverage for minimum hospital stay for mastectomies, lumpectomies, and lymph node dissections for the treatment of breast cancer and coverage for secondary consultations.”; and

1 (2) by inserting after section 9812 the fol-
2 lowing:

3 **“SEC. 9813. REQUIRED COVERAGE FOR MINIMUM HOSPITAL**
4 **STAY FOR MASTECTOMIES, LUMPECTOMIES,**
5 **AND LYMPH NODE DISSECTIONS FOR THE**
6 **TREATMENT OF BREAST CANCER AND COV-**
7 **ERAGE FOR SECONDARY CONSULTATIONS.**

8 “(a) INPATIENT CARE.—

9 “(1) IN GENERAL.—A group health plan that
10 provides medical and surgical benefits shall ensure
11 that inpatient (and in the case of a lumpectomy,
12 outpatient) coverage and radiation therapy is pro-
13 vided for breast cancer treatment and that inpatient
14 coverage with respect to the treatment of breast can-
15 cer is provided for a period of time as is determined
16 by the attending physician, in consultation with the
17 patient, to be medically appropriate following—

18 “(A) a mastectomy;

19 “(B) breast conserving surgery (such as a
20 lumpectomy, whether performed on an inpatient
21 or outpatient basis) as well as radiation treat-
22 ment; or

1 “(C) a lymph node dissection for the treat-
2 ment of breast cancer.

3 “(2) EXCEPTION.—Nothing in this section shall
4 be construed as requiring the provision of inpatient
5 coverage if the attending physician and patient de-
6 termine that a shorter period of hospital stay is
7 medically appropriate.

8 “(b) PROHIBITION ON CERTAIN MODIFICATIONS.—
9 In implementing the requirements of this section, a group
10 health plan may not modify the terms and conditions of
11 coverage based on the determination by a participant or
12 beneficiary to request less than the minimum coverage re-
13 quired under subsection (a).

14 “(c) NOTICE.—A group health plan shall provide no-
15 tice to each participant and beneficiary under such plan
16 regarding the coverage required by this section in accord-
17 ance with regulations promulgated by the Secretary. Such
18 notice shall be in writing and prominently positioned in
19 any literature or correspondence made available or distrib-
20 uted by the plan and shall be transmitted—

21 “(1) in the next mailing made by the plan to
22 the participant or beneficiary;

23 “(2) as part of any yearly informational packet
24 sent to the participant or beneficiary; or

25 “(3) not later than January 1, 2004;

1 whichever is earlier.

2 “(d) SECONDARY CONSULTATIONS.—

3 “(1) IN GENERAL.—A group health plan that
4 provides coverage with respect to medical and sur-
5 gical services provided in relation to the diagnosis
6 and treatment of cancer shall ensure that full cov-
7 erage is provided for secondary consultations by spe-
8 cialists in the appropriate medical fields (including
9 pathology, radiology, and oncology) to confirm or re-
10 fute such diagnosis. Such plan or issuer shall ensure
11 that full coverage is provided for such secondary
12 consultation whether such consultation is based on a
13 positive or negative initial diagnosis. In any case in
14 which the attending physician certifies in writing
15 that services necessary for such a secondary con-
16 sultation are not sufficiently available from special-
17 ists operating under the plan with respect to whose
18 services coverage is otherwise provided under such
19 plan or by such issuer, such plan or issuer shall en-
20 sure that coverage is provided with respect to the
21 services necessary for the secondary consultation
22 with any other specialist selected by the attending
23 physician for such purpose at no additional cost to
24 the individual beyond that which the individual

1 would have paid if the specialist was participating in
2 the network of the plan.

3 “(2) EXCEPTION.—Nothing in paragraph (1)
4 shall be construed as requiring the provision of sec-
5 ondary consultations where the patient determines
6 not to seek such a consultation.

7 “(e) PROHIBITION ON PENALTIES.—A group health
8 plan may not—

9 “(1) penalize or otherwise reduce or limit the
10 reimbursement of a provider or specialist because
11 the provider or specialist provided care to a partici-
12 pant or beneficiary in accordance with this section;

13 “(2) provide financial or other incentives to a
14 physician or specialist to induce the physician or
15 specialist to keep the length of inpatient stays of pa-
16 tients following a mastectomy, lumpectomy, or a
17 lymph node dissection for the treatment of breast
18 cancer below certain limits or to limit referrals for
19 secondary consultations; or

20 “(3) provide financial or other incentives to a
21 physician or specialist to induce the physician or
22 specialist to refrain from referring a participant or
23 beneficiary for a secondary consultation that would
24 otherwise be covered by the plan involved under sub-
25 section (d).”.

1 (b) CLERICAL AMENDMENT.—The table of contents
 2 for chapter 100 of such Code is amended by inserting after
 3 the item relating to section 9812 the following:

“Sec. 9813. Required coverage for minimum hospital stay for mastectomies,
 lumpectomies, and lymph node dissections for the treatment of
 breast cancer and coverage for secondary consultations.”.

4 (c) EFFECTIVE DATES.—

5 (1) IN GENERAL.—The amendments made by
 6 this section shall apply with respect to plan years be-
 7 ginning on or after the date of enactment of this
 8 Act.

9 (2) SPECIAL RULE FOR COLLECTIVE BAR-
 10 GAINING AGREEMENTS.—In the case of a group
 11 health plan maintained pursuant to 1 or more collec-
 12 tive bargaining agreements between employee rep-
 13 resentatives and 1 or more employers ratified before
 14 the date of enactment of this Act, the amendments
 15 made by this section shall not apply to plan years
 16 beginning before the later of—

17 (A) the date on which the last collective
 18 bargaining agreements relating to the plan ter-
 19 minates (determined without regard to any ex-
 20 tension thereof agreed to after the date of en-
 21 actment of this Act), or

22 (B) January 1, 2004.

23 For purposes of subparagraph (A), any plan amend-
 24 ment made pursuant to a collective bargaining

1 agreement relating to the plan which amends the
2 plan solely to conform to any requirement added by
3 this section shall not be treated as a termination of
4 such collective bargaining agreement.

○